

FCC MAIL SECTION
Before the
Federal Communications Commission
Washington, D.C. 20554

SEP 22 2 32 PM '92

MM Pocket No. 92-215

DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b), RM-8063
Table of Allotments,
FM Broadcast Stations.
(Preston, Minnesota)

NOTICE OF PROPOSED RULE MAKING

Adopted: August 24, 1992; Released: September 22, 1992

Comment Date: November 13, 1992

Reply Comment Date: November 30, 1992

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by KFIL Inc. ("petitioner") requesting the substitution of Channel 276C3 for Channel 276A at Preston, Minnesota.¹ Petitioner also requests modification of its license for Station KFIL-FM, Channel 276A, to specify operation on Channel 276C3. Petitioner submitted an engineering analysis in support of the proposal and states its intention to file an application for the channel, if allotted.

2. We believe the public interest would be served by proposing the substitution of Channel 276C3 for Channel 276A at Preston, Minnesota, since it would provide the community with expanded service. Channel 276C3 can be allotted to Preston, Minnesota, at petitioner's specified site in compliance with the Commission's spacing requirements.² Channel 276C3 at Preston is short spaced to the allotment for Channel 278C2 at Waukon, Iowa, which has been reserved for Station KNEI-FM. Station KNEI-FM has a construction permit for Channel 278C2 at a site that is fully spaced to Channel 276C3 at Preston. The grant of a license for Channel 276C3 at Preston may be withheld pending issuance of a license for Station KNEI-FM, Waukon, on Channel 278C2. We shall also propose to modify the license for Station KFIL-FM, Channel 276A, to specify operation on Channel 276C3 in accordance with Section 1.420(g) of the Commission's Rules.

¹ Although petitioner's request indicates that the original copy of its proposal was signed, it failed to include an affidavit verifying that the statements contained in its petition were accurate to the best of its knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel shall be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.402(b) of the Commission's Rules concern-

3. In view of the above, we believe it would serve the public interest to seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the community listed below:

City	Present	Proposed
Preston, Minnesota	276A	276C3

4. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this Order to the following:

David H. Hogendorn
Station KNEI-FM
P.O. Box 151
Waukon, Iowa 52172

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before November 13, 1992, and reply comments on or before November 30, 1992, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Michael Borgen, President
KFIL Inc.
Box 377
Preston, Minnesota 55965

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed

ing rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. See also *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3910, n.41 (1990). Petitioner is requested to rectify this omission in its comments.

² The coordinates for Channel 276C3 at Preston are 43-44-38 and 91-54-04.

Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial com-

ments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.